

**United States Department of Labor
Employees' Compensation Appeals Board**

BETTY J. TURNER, Appellant

and

**U.S. COAST GUARD, Washington, DC,
Employer**

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**Docket No. 04-178
Issued: March 1, 2004**

Appearances:
Betty J. Turner, pro se
Office of the Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

DAVID S. GERSON, Alternate Member
WILLIE T.C. THOMAS, Alternate Member
A. PETER KANJORSKI, Alternate Member

JURISDICTION

On October 23, 2003 appellant filed a timely appeal from an Office of Workers' Compensation Programs' decision dated September 24, 2003. Under 20 C.F.R §§ 501(c), and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has established that she sustained an injury in the performance of duty on December 14, 2001; and (2) whether the Office properly refused to reopen appellant's claim for further review on the merits under 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On January 14, 2002 appellant, a 47-year-old program analyst, filed a claim for benefits, alleging that she injured both knees and both feet on December 14, 2001 when she fell while trying to catch a bus. The employing establishment controverted the claim, contending that she failed to report the claim on a Form CA-1 within 30 days following the injury.

By letter dated April 9, 2003, the Office advised appellant that it required additional factual and medical evidence to determine whether she was eligible for compensation benefits. The Office stated that appellant had failed to submit sufficient evidence indicating she had provided timely notification of her work injury, that she actually experienced the incident or employment factor alleged to have caused the injury, or that she was injured while performing any duty her employment. The Office asked appellant to submit a comprehensive medical report from her treating physician describing her symptoms and the medical reasons for her condition, stating a diagnosis and an opinion as to whether her claimed condition was causally related to her federal employment. The Office requested that appellant submit the additional evidence within 30 days.

Appellant completed the Office questionnaire and submitted it to the Office by facsimile dated May 9, 2003. In a letter received by the Office on May 9, 2003, appellant stated that she could have reported the alleged December 14, 2001 employment injury within 30 days, but that her submission was delayed several days because she was awaiting a response from the driver of the bus which she was trying to catch in the course of her fall.¹ Appellant also stated that she delayed seeking medical treatment because her condition did not seem sufficiently serious. She stated, however, that she began seeing Dr. Hig-Chang Lee, Board-certified in internal medicine, and that she was scheduled to undergo a magnetic resonance imaging (MRI) scan. Appellant further stated that she underwent physical therapy to ameliorate her alleged work-related knee and foot conditions.

Appellant submitted treatment notes from October through December 2002 which indicated she was being treated for pain in both legs. In a treatment note dated October 20, 2002, under the heading "history of injury/chief complaint" it is stated that appellant fell onto both patellas in December 2001, that she had spurs in both knees and that she experienced recurring pain with the initiation of motion to sit and stand. The report was received by the Office on May 9, 2003.

In a radiology report dated June 7, 2002, Dr. Larry J. Bernstein, a Board-certified radiologist, diagnosed bilateral knee pain and noted spurring off the superior anterior patella in the left knee. The report was received by the Office on May 9, 2003.

By decision dated May 12, 2003, the Office denied the claim finding appellant failed to establish fact of injury. The Office found that the evidence appellant submitted was insufficient to establish that the event occurred as alleged. The Office also found that appellant failed to submit medical evidence containing a diagnosis which could be connected to the claimed event.

By letter dated May 13, 2003, appellant requested reconsideration. Appellant stated that she called the Office on May 8, 2003 to confirm the appropriate number to send her facsimile which contained her response to the Office's April 9, 2003 letter and the accompanying medical

¹ The driver's witness statement is printed on the Form CA-1. The driver stated, "I Kenneth E. Melvin who drive the shuttle bus observed the above complainant trip and fall to the ground over uneven asphalt while running to catch the shuttle bus I was driving. I also observed the above complainant after getting up off the ground walk with a noticeable limp."

evidence. She noted that she received a facsimile number from the Office which showed that her response was received on May 9, 2003.

By decision dated September 24, 2003, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence sufficient to require the Office to review its prior decision. The Office stated that a merit review of the case was not warranted because the request for reconsideration contained copies of physical therapy notes and an x-ray report that were already reviewed prior to the previous decision of May 12, 2003.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing that the essential elements of his or her claim including the fact that the individual is an "employee of the United States" within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged, and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To determine whether a federal employee has sustained a traumatic injury in the performance of duty, it must first be determined whether a "fact of injury" has been established. First, the employee must submit sufficient evidence to establish that he or she actually experienced the employment incident at the time, place and in the manner alleged.⁵ Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish that the employment incident caused a personal injury.⁶ The medical evidence required to establish causal relationship is usually rationalized medical evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁷

² 5 U.S.C. § 8101 *et seq.*

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143 (1989).

⁴ *Victor J. Woodhams*, 41 ECAB 345 (1989).

⁵ *John J. Carlone*, 41 ECAB 354 (1989).

⁶ *Id.* For a definition of the term "injury," see 20 C.F.R. § 10.5(a)(14).

⁷ *Id.*

ANALYSIS -- ISSUE 1

The Office erred by failing to consider evidence pertaining to appellant's claim which she submitted, and was received by the Office, prior to the May 12, 2003 Office decision. The Office stated in its May 12, 2003 decision that appellant had been advised of the deficiencies in her claim in its April 9, 2003 letter but that "No further evidence was received." This statement, however, is erroneous. The completed Office questionnaire, appellant's May 9, 2003 statement and the medical evidence she sent in support of her claim were all dated as received by the Office on May 9, 2003. The copy of the facsimile appellant sent to the Office was also dated May 9, 2003. Thus, the evidence of record indicates that the Office received evidence submitted by appellant prior to issuing its May 12, 2003 decision, but did not consider this evidence.⁸

The Act⁹ provides that the Office shall determine and make findings of fact in making an award for or against payment of compensation after considering the claim presented by the employee and after completing such investigation as the Office considers necessary with respect to the claim. Since the Board's jurisdiction of a case is limited to reviewing that evidence which was before the Office at the time of its final decision,¹⁰ it is necessary that the Office review all evidence submitted by a claimant and received by the Office prior to issuance of its final decision. As the Board's decisions are final as to the subject matter appealed,¹¹ it is crucial that all evidence relevant to that subject matter which was properly submitted to the Office prior to the time of issuance of its final decision be addressed by the Office.¹²

The Office did not review the evidence received prior to the issuance of its May 12, 2003 final decision. The Board, therefore, will set aside the Office's May 12, 2003 decision and remand the case to the Office to fully consider appellant's evidence pertaining to whether she actually experienced the employment incident at the time, place and in the manner, as well as the medical evidence appellant submitted in support of her claim. After such development of the case record as the Office deems necessary, an appropriate decision shall be issued.¹³

CONCLUSION

Under the circumstances described above, the Board finds that the case is not in posture for decision as the Office failed to properly consider the evidence of record.

⁸ The Board notes that the Office found that appellant both failed to submit sufficient evidence to establish that the event occurred as alleged and that she failed to submit medical evidence containing a diagnosis.

⁹ 5 U.S.C. §§ 8101-8193.

¹⁰ See 20 C.F.R. § 501.2(c).

¹¹ 20 C.F.R. § 501.6(c).

¹² *William A. Couch*, 41 ECAB 548 (1990) (the Office failed to review evidence submitted four days prior to the issuance of the Office decision).

¹³ As the Board has set aside the May 12, 2003 Office decision and remanded to the Office for reconsideration of the fact of injury issue, the Board need not consider the Office's September 24, 2003 nonmerit decision denying reconsideration.

ORDER

IT IS HEREBY ORDERED THAT the May 12, 2003 decision of the Office of Workers' Compensation Programs is hereby set aside, and the case is remanded for further action consistent with this decision of the Board.

Issued: March 1, 2004
Washington, DC

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member

A. Peter Kanjorski
Alternate Member